IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 03-Z-2453 (CBS)

KEITH LANCE,
CARL MILLER,
RENEE NELSON,
NANCY O'CONNOR,

Plaintiffs,

v.

DONETTA DAVIDSON, Secretary of State for the State of Colorado, in her Official Capacity,

Defendant.

PLAINTIFFS' BRIEF IN SUPPORT OF PETITION CLAUSE CLAIM

Plaintiffs Keith Lance, Carl Miller, Renee Nelson, and Nancy O'Connor, by and through their attorneys, Brett R. Lilly, John S. Zakhem, and the law firm of Doyle Zakhem Suhre & Lilly, LLC, respectfully submit their Brief in Support of Petition Clause Claim, and as grounds therefore state as follows:

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I. Introduction

The issue in this case is whether a state law prohibiting enforcement of legislative action on redistricting violates the 1st and 14th Amendments to the United States Constitution. Colo. Const. art. V, § 44 (hereinafter Art. V, § 44) limits redistricting to once per decade, to be completed in the time between the decennial census and the first election of the decade. Further, the Secretary of State must employ the judicially created plan that is currently in place through the 2010 elections. *Colorado General Assembly v. Salazar,* 541 U.S. 1093, 1093-94 (2004) (petition for writ of certiorari denied) (Rehnquist, C.J., dissenting). Art. V, § 44's prohibition of the enforcement of any legislative redress of redistricting grievances violates the Plaintiffs' right "to petition the government for a redress of grievances." U.S. Const. amend. I.

II. Standard of Review

When a complaint is challenged under F.R.C.P. 12(b)(6), the court presumes that all well-pleaded allegations are true, resolves all doubts and inferences in the pleader's favor, and views the pleading in the light most favorable to the non-moving party. *See Albright v. Oliver*, 510 U.S. 266, 267 (1994). Additionally, to the extent Plaintiffs' petition claim presents a facial challenge to Art. V, § 44, judgment on the pleadings as a matter of law is appropriate pursuant to F.R.C.P. 12 (c). *See, e.g., Lilly v. Salida*, 192 F. Supp. 1191, 1194 (D. Colo. 2002) (summary judgment appropriate where city ordinance unconstitutional prior restraint on its face).

Because governmental laws establishing a system of prior restraint on constitutionally protected expression are presumed to be invalid, the government must carry a heavy burden of showing justification for the imposition of such restraint. *New York Times Co. v. United States*,

403 U.S. 713, 714 (1971); *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 716 (1931). Content-based restrictions that affect fundamental rights and politically expressive activity are presumed invalid and are subject to the "most exacting scrutiny" requiring the state to show that the restriction is necessary to serve a compelling state interest and that it is narrowly tailored to achieve that end. *Police Dep't of Chicago v. Mosley*, 408 U.S. 92, 99 (1972); *Boos v. Barry*, 485 U.S. 312, 321 (1988).

III. Argument

Petitioning the legislature for a redress of redistricting grievances implicates core political speech and expression that lies at the heart of the protections guaranteed by the First Amendment. Art. V, § 44 impermissibly infringes upon such protected petitioning activity and violates the First Amendment in three ways. First, Art. V, § 44 is a prior restraint because it enjoins the enforcement of any new redistricting law in advance of its enactment. Second, it is content based because it is specific to redistricting laws and no other. Third, it has a chilling effect because there is active discouragement to petition the legislature for redistricting grievances if no redress can be enforced because of Art. V, § 44. Finally, the Plaintiffs' Petition Claim states a claim upon which relief can be granted because of the possibility of redress inherent in the Petition Clause.

a. Art. V, § 44 is an Impermissible Prior Restraint

The principle that constitutionally protected expression cannot be prohibited by governmental authority is not only well established in precedent, but also can be traced back to Madison as well. *Near*, 283 U.S. at 717-18; *see City of Colorado Springs v. 2354, Inc.*, 896 P.2d

272, 286 n. 12 (Colo. 1995). *Near* and its progeny demonstrate that this principle is especially true in the case of prior restraints in the form of injunctions. 283 U.S. at 713-14. For example, in the context of petitioning the courts under the *Noerr-Pennington* doctrine, the Court observed that "enjoining a lawsuit could be characterized as a prior restraint, whereas declaring a completed lawsuit unlawful could be characterized as an after-the-fact penalty on petitioning." *BE & K Construction Co. v. N.L.R.B.*, 536 U.S. 516, 530 (2002). The same prior restraint analysis would be true of a state law prohibiting the court from granting *any* relief that was otherwise lawful in such a case, even if a litigant successfully completed a lawsuit. Or, to take the converse case of *Noerr*, to prohibit the results advocated by persons taking public positions in matters of personal financial interest would "deprive the people of their right to petition . . . ." *Eastern Railroad Presidents Conference v. Noerr Motor Freight*, 365 U.S. 127, 139 (1961) (construction of the Sherman Act that would disqualify people from taking a public position in matters in which they are financially interested violates Petition Clause).

Here, the right to petition for redress of grievances related to redistricting is violated because Art. V, § 44 operates as an impermissible content based prior restraint enjoining enforcement of any legislative redress, and thus restricts and chills petition activity regarding redistricting in advance of its expression. *Alexander v. United States*, 509 U.S. 504, 550 (1993) (state action that forbids certain communications when issued prior to the time the communications are to occur constitutes a prior restraint). Because Art. V, § 44 enjoins the enforcement of any legislative redistricting plan, it renders moot any attempts to petition the legislature regarding redistricting. That is to say, Plaintiffs are denied any forum to petition, and

the legislature is denied the ability to enact a redistricting plan to redress any grievances due to the operation of Art. V, § 44. Complete bans on an entire medium of speech are not narrowly tailored. *City of Ladue v. Gilleo*, 114 S. Ct. 2038, 2045 (1994). This discouragement and disqualification of petitioning activity on redistricting and the *post hoc* denial of representation and access to the legislature violates the Petition Clause. *C.f. In re 1991 Pa. Legis. Reapportionment*, 609 A.2d 132, 141 (Pa. 1992) (*dicta* suggesting that lack of representation would state a claim for deprivation of right to petition).

The right to free speech and the right to petition "are related and generally subject to the same constitutional analysis." *Wayte v. United States*, 470 U.S. 598, 610 n. 11 (1985). It is readily accepted in our free speech jurisprudence that if a State law proscribed or compelled a certain belief regarding redistricting, this would certainly violate the First Amendment, even if such law did not prevent speech or advocacy on redistricting, or listening to such speech by the recipient of the communication. *West Virginia State Bd. of Edu. v. Barnette*, 319 U.S. 624, 642 (1942) ("If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion . . . ."). That is, to proscribe or compel an opinion or belief is itself a violation of the First Amendment, irrespective of whether any restrictions on speech or listening exist. "We set up government by consent of the governed, and the Bill of Rights denies those in power any legal opportunity to coerce that consent." *Id.*, at 641.

The same analysis is applicable to petitioning activity. For purposes of the Petition Clause, an impairment that "prohibit[s] or discourage[s]" petitioning activity is proscribed by the

Constitution. *Smith v. Arkansas State Highway Employees, Local 1315*, 441 U.S. 463, 446 (1979). If compelling or proscribing belief or action violates the First Amendment under *Barnette*, then proscribing the legislative ability to act in response to a redistricting grievance likewise violates the Petition Clause because it prohibits redressing the redistricting grievance, and discourages any petitioning regarding redistricting grievances in the first place because there is no point in petitioning an impotent legislature. The violation in this case is no different than a state law prohibiting the results of votes cast for a certain proposition or candidate. *See Cook v. Gralike*, 531 U.S. 510 (2001) (Elections Clause does not grant states power to dictate electoral outcomes, to favor or disfavor a class of candidates, or to evade important constitutional restraints); *see also Id.,* at 530 (Rehnquist, C.J., and O'Connor., J., concurring in the judgment) (state constitution provision that was content based and discriminated on the basis of viewpoint violated First Amendment rights of political candidates). The defense to such laws that there is no First Amendment violation because there was no restriction on the ability to cast a vote completely ignores the prohibition on the effect of the vote. Just as there is no meaningful distinction between the action of casting a vote and the politically expressive message of voting, there is likewise no meaningful distinction between prohibiting the object of redress in redistricting grievances or prohibiting the petitioning activity in the first place. The effect is the same, the right is left meaningless in either instance. That is, for analysis of a constitutional impairment, the nexus between speech and outcome in the voting context is no different than petitioning and redress. Just as prohibiting the outcome of a particular vote is a violation of the First Amendment, so is prohibiting the ability to redress.

Generally, speech can only be suppressed because of what the speech is advocating in the face of a "clear and imminent danger. . ." *Abrams v. United States*, 250 U.S. 616, 627 (1919) (Holmes, J., dissenting); *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969). So it follows that just as the government generally cannot ban political speech because of its communicative impact, it likewise cannot ban the communicative impact (*i.e.,* political action) resulting from political speech. This is the essence of the checking function that the Framers envisioned and that the First Amendment protects. *Near*, 283 U.S. at 722 ("To prohibit the intent to excite those unfavorable sentiments against those who administer the Government, is equivalent to a prohibition of the actual excitement of them; and to prohibit the actual excitement of them is equivalent to a prohibition of discussions having that tendency and effect . . . .") (*quoting* Madison, *Report on the Virginia Resolutions*, Madison's Works, vol. iv, 549)); *see* Vincent Blasi, *The Checking Value in First Amendment Theory*, Am. B. Found. Res.J. 521, 528-538 (1977) ("Madison placed more emphasis than earlier theorists on the role of the electorate in the checking process, and also on the need to check errors of judgment as well as illegal or despotic actions by government officials."). Even political speech that "may create resentment and the disposition to *resort to violent means of redress*" is still protected "against censorship and restraint . . ." *Near*, 283 U.S. at 722 (emphasis added). Just as the Sedition Act of 1798, "because of the restrain it imposed upon criticism of government and public officials, was inconsistent with the First Amendment," *New York Times v. Sullivan*, 376 U.S. 254, 2276 (1964), a restraint imposed upon lawful redress sought by lawful petitioning means – especially regarding redistricting grievances – violates the Petition Clause. *See Near*, 283 U.S. at 722 (if

possibility of violent means of redress warranted prior restraints "the constitutional protection would be reduced to a mere form of words.").

b. Art. V, § 44 is an Invalid Content Based Restriction

By only prohibiting action related to redistricting, Art. V, § 44 selectively restricts such petitioning activity protected by the First Amendment and further affects the fundamental rights of voting and participating in the political process. That is, it prohibits redress of petitions for redistricting grievances based precisely on the subject matter of redistricting. "[A]bove all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Mosley*, 408 U.S. at 95 (citations omitted). Art. V, § 44 acts to prohibit the legislature from redressing any grievance about redistricting. Hence, no petition regarding any redistricting grievance can be redressed, which constitutes a violation of the Petition Clause because the restriction on expression cannot be justified without reference to the content of the regulated speech – redistricting. *United States v. Eichman*, 496 U.S. 310, 318 (1990) (citations omitted). The government cannot ban speech "out of concern for its likely communicative impact." *Id.* at 317. Likewise, the government cannot prohibit lawful political outcomes that result from persuasive political speech or advocacy or from petitioning activity. This is especially true of redistricting political activity. Such a sweeping denial of the right to petition on a matter of such fundamental political import that the legislative power to act is secured by art. I, § 4 of the U.S. Constitution is "unprecedented in our jurisprudence." *Romer v. Evans*, 517 U.S. 620, 633 (1996).

The justification for the ban on any new redistricting plans is based in reference to Art.

V, § 44's limitation on redistricting to once per decade, *i.e.,* it is based on and justified by the content of the political expression at issue. Restrictions on expression "may not be based on content alone, and may not be justified by reference to content alone." *Moseley*, 408 U.S. at 96. *Romer* and *Mosley* compel the same result here on First Amendment grounds because Art. V. § 44 denies *all* citizens the right to petition the government for any redress of grievances related to redistricting. Just as the state cannot "deem a class of persons a stranger to its laws" under the Equal Protection Clause, Art. V, § 44 cannot deem every person a stranger to its redistricting laws under the Petition Clause and U.S. Const. art. I, § 4. *Romer*, 517 U.S. at 635; *Mosley*, 408 U.S. at 96 (First Amendment and Equal Protection Clause prohibit content based discrimination on protected speech).

c. Art. V, § 44 Impermissibly Chills Protected Expression

In First Amendment cases, an overbreadth challenge will void a state law on its face if the law substantially chills constitutionally protected expression or activity. *See Osborne v. Ohio*, 495 U.S. 103, 111 (1990). Thus, the analysis in this case requires an examination of whether Art. V, § 44 effectively chills and "discourage[s]" the right to petition the government in the most political of governmental activities – redistricting. *Smith,* 441 U.S. at 466.

Art. V, § 44 prohibits the legislative, executive, and judicial branches of Colorado State government from taking any action whatsoever with respect to redistricting prior to the next census. Therefore, there is no Colorado citizen, including Plaintiffs, who can effectively petition government for redress of redistricting grievances, regardless of how redistricting affects them or what their political party affiliation may be. If a petition cannot be acted upon, *i.e.,* redressed,

and for all purposes must fall on deaf ears, there is a chilling effect on the right to petition by virtue of the law precluding any governmental action. This certainly "discourage[s]" petitioning activity, which violates the First Amendment. *Smith*, 441 U.S. at 466.

d. Petition Clause Includes The Possibility Of Redress

The possibility (as distinguished from any sort of right or guarantee) of redress is inherent in the Petition Clause as a textual matter. The Clause protects the right to petition for a *redress* of grievances. The Clause does not state that petition activity is protected merely for the sake of petitioning, it is specifically links petitioning the government to the phrase "for a redress of grievances." Indeed, petition is defined as a written address "to the power, body, or person to whom it is presented, for the exercise of his or their authority in the redress of some wrong." BLACK'S LAW DICTIONARY 793 (Abridged 6th ed. 1991). Thus, in the specific context of redistricting, any prohibition on legislature's ability to redress a grievance abridges the very essence of the petition right.

Contrary to Defendant's assertion, Plaintiffs do not claim that the petition right compels the government to redress grievances or that there is a right to redress or successful redress. *Gordon v. Heimann*, 514 F.Supp. 659, 661 (N.D. Georgia, 1980). However, the Petition Clause is necessarily connected with the powers and duties of government. "The right of the people peaceably to assemble for the purpose of petitioning Congress for a redress of grievances, or for any thing else connected with the *powers or the duties* of the . . . government, is . . . under the protection of, and guaranteed by, the United States." *United States v. Cruikshank*, 92 U.S. 542, 552 (1876); *Crandall v. State of Nevada*, 73 U.S. 35, 44 (1868). This is a far cry from the

impotent government advocated by the Defendant. In fact, the reason that the Constitution does not grant a general right to be heard by the government in making policy decisions is because individual "rights are protected in the only way they can be in a complex society, by the power, immediate or remote, over those who make the rule." *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271, 283-84 (1984) (quoting *Bi-Metallic Investment Co. v. State Board of Equalization*, 239 U.S. 441, 445 (1915)). Thus, the reasoning behind the ability of the government to ignore petitions is that citizens can respond at the polls. However, this does not support the proposition that prohibiting the ability of government to redress a grievance, and particularly a redistricting grievance, is not a violation of the Petition Clause.

It is true that the recipient of a communication, or the government in the case of a petition, is not required to listen to speech, let alone believe it or act upon it. *Smith*, 441 U.S. at 466. But that is a far different case than a state law *prohibiting* the ability to listen, believe or act on the part of the recipient of the communication, or the government in the case of petitioning, because First Amendment protection is afforded to the communication, its source, and its recipient. *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 756-57 (1976). That is, the line of cases standing for the proposition that the right to petition does not equate to a right to guarantee that the government will listen or even act are not inapposite because in none of those cases was the *possibility* of successful petition activity, *i.e.*, the ability of government to redress the grievance, precluded by operation of state law. Several cases support the proposition that the Petition Clause implies that the government must at least have the ability to redress the grievance. *See, e.g., Canfora v. Olds,* 562 F.2d 363, 364

(6th Cir. 1977) (legislature "possess[es] power in regard to the redress of these grievances which Congress has not conferred upon the federal judiciary."); *Cronin v. Town of Amesbury*, 895 F. Supp. 375, 390 (D. Mass. 1995) (grievance claims were investigated and considered by government "and that was constitutionally sufficient."); *LeBlanc-Sternberg v. Fletcher*, 781 F. Supp. 261, 266 (S.D.N.Y. 1991) (petitioning activity protected "so long as the petitioner is concerned with obtaining the relief afforded by the system." (citations omitted)); *Stengel v. City of Columbus*, 737 F. Supp. 1457, 1459 (S.D. Ohio, 1988) (where petition is made and considered by government, petition right is exercised); *Protect Our Mountain Environment, Inc. v. District Court, County of Jefferson*, 677 P.2d 1361, 1364 (Colo. 1984) ("In a representative democracy, *government acts on behalf of the people*, and effective representation depends to a large extent upon the ability of the people to make their wishes known to governmental officials *acting* on their behalf.") (emphasis added). "The right of petition, therefore, includes the freedom to ask, demand, or call upon one's government *to act, or to change its policy or law.*" *Pickering v. Flacke*, 453 N.Y.S.2d 1016, 1018 (S.C.N.Y. 1982) (emphasis added).

Defendant's reliance on *Christensen v. Ward*, 916 F.2d 1462 (10th Cir. 1990), and *Bowman v. Niagara Machine & Tool Works, Inc.*, 832 P.2d 1052 (7th Cir. 1987) is mis-placed. At least since Blackstone, there has been a distinction between the right of redress in the courts and the right to petition government, as the former invokes the *judicial power* of government to redress a wrong committed by another, and the latter is a prayer to redress a wrong *committed by the government*. 1 WILLIAM BLACKSTONE, COMMENTARIES, 141-143. Thus, Defendant's sweeping claim that a failure to redress a grievance based on the government's inability to

provide the requested redress is not a violation of the Petition Clause is not correct, as *Ward* and *Bowman* only speak to the inability of the plaintiff to receive redress in a judicial forum based on "the recognition that the right [of access] is ancillary to the underlying claim, without which a plaintiff cannot have suffered injury by being shut out of court." *Cristopher v. Harbury*, 536 U.S. 403, 415 (2002). *Ward* and *Bowman* deal with access to the judicial process. They stand for the proposition that as long as there are no procedural impediments to the exercise of existing rights, nothing prevents a court from holding that a plaintiff has no remedy at law for alleged injuries. There is a vast difference between challenging statutory immunity from tort or products liability claims in court and petitioning the legislature for a redress of redistricting grievances.

Defendant's wild assertion that somehow judicial review will be abdicated and the legislature will be free to pass unconstitutional laws has no foundation in the Plaintiffs' claim, as the object of the petitioning activity – the grievance sought to be redressed – is rooted in the legislative power articulated in U.S. Const. art. I, § 4. Furthermore, the same analytical and doctrinal constraints applicable in other areas of the First Amendment apply to Petition Clause claims. The additional limitations of this case are based on the fact that it is rare indeed in our jurisprudence that a redistricting plan lacking "participation in the process by a body representing the people, or the people themselves in a referendum" is enforced by operation of a state law. *Colorado General Assembly*, 514 U.S. at 1095 (Rehnquist, C.J., dissenting). Thus, this is a very unique context that will likewise create a very limited holding by this Court.

Perhaps the most compelling authority for the need for government to have at least the ability to redress grievances is The Declaration of Independence. The lack of redress for the

grievances of the Colonies justified the dissolution of any political connection to Great Britain. "In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury." *The Declaration of Independence,* para. 30 (U.S. 1776). Thus, because the government became "destructive of these ends [of liberty], it is the Right of the People to alter or to abolish it . . . ." *Id.* at para. 2. As such, government must at least be capable of responding to grievances, for censorship of political expression without the ability of redress would serve to perpetuate tyranny. *Near*, 283 U.S. at 718 ("Had 'Sedition Acts' . . . been uniformly enforced against the press, might not the United States . . . possibly, be miserable colonies, groaning under a foreign yoke?") (quoting Madison, *supra*)).

When Madison introduced his proposed list of amendments to the Constitution, the express function of the assembly-petition clause was to protect citizens "applying to the Legislature...for a *redress* of their grievances." 2 B. Schwartz, *The Bill of Rights: A Documentary History* 1026 (1971) (emphasis added). This means that the government must have power to at least consider and redress a citizen's petition for the right to have any meaning. This is certainly true in the specific context of redistricting because U.S. Const. art. I, §4 ensures that the legislature can act and actually respond to this vital petition activity. "The right to petition for the redress of grievances has an ancient history and is *not limited* to writing a letter or sending a telegram to a congressman." *Adderley v. Florida*, 385 U.S. 39, 49-50 (1966) (Douglas, J., dissenting) (emphasis added). Inherent in the Petition Clause is the fundamental right of citizens to challenge and affect change in their government. *Cruikshank*, 92 U.S. at 552 ("The very idea

of government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances."). As such, it is not enough that the public "exercise . . its sovereign authority" by petitioning the government *merely* to "communicate their will." *McDonald v. Smith*, 472 U.S. 479, 489 (1986) (Brennan, J., concurring) (quoting James Madison, 1 Annals of Cong 738 (1789)). The checking function of the First Amendment "was fashioned to assure unfettered interchange of ideas for the bringing about of *political and social change* desired by the people." *Roth v. United States*, 354 U.S. 476, 484 (1957) (emphasis added). Thus, petitioning grievances concerning redistricting is expression essential "to the end that government may be *responsive to the will of the people and that changes may be obtained by lawful means.*" *Stromberg v. California*, 283 U.S. 359, 369 (1931) (emphasis added).

Petitioning activity in and of itself may function as a safety valve that promotes legitimacy and provides a "designated alternative to force." *BE & K Construction Co.*, 536 U.S. at 533. But just as important is the ability of the system to provide relief to grievances. Indeed, the ability to provide redress is vital in a republican government "deriving [its] just powers from the consent of the governed." *The Declaration of Independence,* at para. 2. The lack of the ability for redress can too easily lead to tyranny, at which point the people have the right to alter or abolish such government. Of course, the suggestion of revolution is extreme, and the Constitution and Bill of Rights are meant to preserve the Union. *Id.* at para. 2. These two critical authorities – the Constitution and the Bill of Rights – must be read in concert, for "[t]hose who won our independence believed . . . that the path of safety lies in the opportunity to

discuss freely supposed grievances and proposed remedies . . . ." *Whitney v. California*, 274 U.S. 357, 375-76 (1927) (Brandeis, J., concurring). This is why the possibility of redress is inherent in the Petition Clause, and it is a violation of the Plaintiffs' individual petitioning rights for a state law to prohibit the possibility of redressing redistricting grievances.

V. Conclusion

Art. V, § 44 nullifies the ability of the legislature to consider and provide relief to citizens on what is perhaps the most important and fundamental action affecting representation in our republic — the nature and geographic delineation of legislative districts. Certainly the First Amendment does not guarantee that the government will even listen to, much less adopt, a particular solution as petitioned for by a citizen or group of citizens. But the Right to Petition does mean that the state may not seal off citizens from the ability to make their voices heard, or declare the legislature powerless to provide a remedy where the petitioning activity concerns core political expression regarding redistricting, and the petition is directed at the legislature, which is specifically granted the power to redistrict pursuant to U.S. Const. art I, §4. Accordingly, a declaration that Art. V, § 44 violates the First Amendment would remedy the injury suffered by Plaintiffs. Without the prohibition posed by Art. V, § 44, the legislature would be free to listen to or ignore petitions regarding redress of redistricting grievances, and would likewise be free to act on or ignore such petitions. If the legislature wishes, it would be able to enact a new redistricting plan without fear that it would be prohibited by Art. V, § 44. Additionally, this Honorable Court should also implement the congressional redistricting plan enacted by the Colorado General Assembly in 2003 – C.R.S. § 2-1-101 (2003).

Dated this July 11, 2005.

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CERTIFICATE OF SERVICE

I certify that on this July 11, 2005, the foregoing was served either electronically, by facsimile and/or US Mail, properly addressed to:

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